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EXAMINER

RIVIERE, HEIDI M

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/720,797

**Applicant(s)**

MCMORRIS ET AL.

**Examiner**

HEIDI RIVIERE

**Art Unit**

3689

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4/9/2009.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Continuation of Disposition of Claims: Claims pending in the application are 1,6,10-15,17,20,23-27,32,33,35,37,38,40,42,45-48,50,52,56,57,59-62,64,67,68,71-74,76,78-80,84,86,87,94,95,97,98 and 100-102.

Continuation of Disposition of Claims: Claims rejected are 1,6,10-15,17,20,23-27,32,33,35,37,38,40,42,45-48,50,52,56,57,59-62,64,67,68,71-74,76,78-80,84,86,87,94,95,97,98 and 100-102.

**DETAILED ACTION****RESPONSE TO REMARKS**

1. Applicants' arguments with respect to claims **1, 6, 10-15, 17, 20, 23-27, 32-33, 35, 37-38, 40, 42, 45-48, 50, 52, 56-57, 59-62, 64, 67-68, 71-74, 76, 78-80, 84, 86-87, 94-95, 97-98, and 100-102** have been considered however they are not persuasive. Examiner used **Daggett et al. (US 2002/0173980 A1)** (hereinafter "**Daggett**") in view of **Sandor et al. (US 2005/0246190 A1)** to reject claims **1, 6, 10-15, 17, 20, 23-27, 32-33, 35, 37-38, 40, 42, 45-48, 50, 52, 56-57, 59-62, 64, 67-68, 71-74, 76, 78-80, 84, 86-87, 94-95, 97-98, and 100-102**.

2. Applicant argues that one of ordinary skill in the art at the time of the invention would not have found it obvious to combine the teachings of Daggett and Sandor. Both reference discuss the tracking of carbon credit information and attribute such information to production data. While there remains no direct mention of identifiers within these two reference, they teach that this data is stored in a registry and traded. As such it would have been obvious that the data would have to be uniquely identified for ease of location. In light of the amendment to the current claims, the Schomer reference has been added to the rejections below. Therefore, the rejections are not withdrawn.

3. The amendments to claims **1, 6, 10-15, 17, 20, 23-27, 32-33, 35, 37-38, 40, 42, 45-48, 50, 52, 56-57, 59-62, 64, 67-68, 71-74, 76, 78-80, 84, 86-87, 94-95, 97-98, and 100-102** have been considered in light of the 35 U.S.C. 101 rejections and therefore the rejections are withdrawn. Furthermore, Applicant's

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arguments in regards to the 35 U.S.C. 112, second paragraph rejections have been considered and are *withdrawn*.

### **Information Disclosure Statement**

4. The Information Disclosure Statements filed on **9 April 2009** has been considered. Initialed copies of the Form 1449 are enclosed herewith.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. **Claims 1, 6, 10-15, 17, 20, 23-27, 32-33, 35, 37-38, 40, 42, 45-48, 50, 52, 56-57, 59-62, 64, 67-68, 71-74, 76, 78-80, 84, 86-87, 94-95, 97-98, and 100-102** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Daggett et al. (US 2002/0173980 A1)** (hereinafter "**Daggett**") in view of **Sandor et al. (US 2005/0246190 A1)** (hereinafter "**Sandor**") and further in view of **Schomer (US 6,108,617)**.

7. **With respect to claim 1: (Currently Amended)** Daggett discloses:

- executing a contract with a producer of at least one of environmental emissions and environmental emissions removal to implement a production practice and collect associated production practice data, wherein;
  - a. a term of said contract comprises the producer providing the production practice data; and
  - b. the production practice data is related to production operations in at least one of the following production sectors: agriculture, forestry, petroleum production, gas production, enhanced oil recovery, fuel production, ethanol production., semiconductor manufacturing, metal production, coal production, deep geologic sequestration, durable goods manufacturing, waste management, and waste landfills;

(Fig. 5; paragraphs 22-35 and 64 – insurance policy , for example crop insurance with farmer that permits insurer to estimate risks and allows farmers to achieve reporting requirements; insurance provider insures farmer if certain requirements are met; information obtained includes farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone; carbon credits verified)

Daggett does not teach the following, however, Sandor teaches:

- the production practice data is collected according to a selected protocol, said selected protocol being adapted to determine at least one of environmental emissions mitigation and environmental emissions removal associated with the production practice of the producer compared to a baseline practice, (page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ... reference emission level is preferably established to be able to obtain emissions data, reflect variations in economic cycles"; adjustments can be made to baseline)
- converting the production practice data to environmental data using pre-selected conversion factors using a processing device; (page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit.”)
- converting at least a portion of the environmental data to a plurality of emission reduction units for a transferring thereof using a processing device, each said emission reduction unit being adapted for use as at least one of an environmental offset, a credit and an allowance. (page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission

or GHG emission reduction equivalents" is applied. "The factor is based on the type of energy activity and the selected activity unit.")

While Daggett in view of Sandor teach GHG emissions data (Fig. 15) and a registry (Fig. 1) for such data, Daggett/Sandor does not teach how this data from the various GHG emission is identified in the registry. However Schomer teaches that alpha-numeric codes can be used to identify GHG emissions:

- assigning a unique identifier to each emission reduction unit, wherein the identifier includes a sequence portion characterizing a succession thereof and a vintage portion characterizing the pre-selected time period for the production practice, and a characterizing portion characterizing at least one of (i) a geographical reference for the producer and (ii) the protocol, said characterizing portion comprising at least one of a first field identifying a protocol type, a second field identifying a version of the protocol, and a third field identifying an authority for the protocol; wherein said identifier is adapted to be correlated with the production practice data and enable tracking of a status regarding the emission reduction unit. (Schomer: col. 5, tables 2 and 3 – various alphanumeric and numeric codes specified)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Sandor, Daggett and Schomer. Daggett teaches production practice and production practice data collection. While Sandor teaches selecting, converting, modifying, crediting and



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registering the data because of the need for an emissions allowance trading system. (Sandor: paragraph 9) Schomer teaches the tracking of chemicals.

Furthermore, the data identifying "creation of a contract" is non-functional descriptive data.

When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed nonfunctional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed. Cir. 1983). The PTO may not disregard claim limitations comprised of printed matter. *See Gulack*, 703 F.2d at 1384-85, 217 USPQ at 403; *see also Diamond v. Diehr*, 450 U.S. 175, 191, 209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the subset. *See In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the subset, but the prior art describes a different descriptive material than the claim, then the descriptive material is nonfunctional and will not be given any patentable weight. That is, such a scenario presents no new and unobvious functional relationship between the descriptive material and the subset.

The Examiner asserts that the data identifying "creation of a contract" adds little, if anything, to the claimed acts or steps and thus do not serve as limitations on the claims to distinguish over the prior art. MPEP 2106IV b 1(b) indicates that "nonfunctional descriptive material" is material "that cannot exhibit any functional interrelationship with the way the steps are performed". Any differences related merely to the meaning and information conveyed through data, which does not explicitly alter or impact the steps is non-functional descriptive data. The subjective interpretation of the data does not patentably distinguish the claimed invention.

8. **With respect to claims 2-5:** (Canceled)
9. **With respect to claim 6:** Daggett teaches the limitations in the rejections above. Daggett does not teach however, Sandor teaches the protocol includes at least one of guidance on measurement methodologies, indirect measurement criteria, modeling, baseline definitions and measurements, IPCC Global Warming Potential (GWP) conversion factors to enable the equivalent comparison of GHG carbon dioxide equivalents (CO<sub>2</sub>e), and individual greenhouse gas performance factors. (page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ...reference emission level is preferably established to be able to obtain emissions data, reflect variations in economic cycles"; adjustments can be made to baseline)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with a protocol because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11)

10. **With respect to claims 7-9:** (Canceled)

11. **With respect to claim 10:** (Previously amended) Daggett teaches the production practice data comprises available external information source data regarding the producer, and wherein the external information source data comprises at least one of site physical data, cropping maps, soil maps, watershed maps, topographical maps, geographical reference data, site permit data, regulatory compliance, overhead photography, infrastructure placement, dimensional data, and commercial performance practices. (paragraphs 26 and 32 – components of the invention creates a map that divides a parcel of land, or field, into management zones)

12. **With respect to claim 11:** (Previously amended) Daggett teaches a term of the contract comprises the producer the warranting the production practice. (Fig. 5; paragraphs 22-35 and 64 – insurance policy , for example crop insurance with farmer that permits insurer to estimate risks and allows farmers to achieve reporting requirements; insurance provider insures farmer if certain requirements are met)

13. **With respect to claim 12:** (Previously amended) Daggett teaches the warranting the production practice comprises at least one of releasing legal

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liability for the data collecting and confirming the accuracy of the data collecting with respect to known production practices. (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

14. **With respect to claims 13 and 86:** (Previously amended) Daggett teaches the collected production data comprises on-site data regarding the producer and the on-site data comprises at least one of on-site data supplied by the producer, on-site data collected by an assessment team, on-site data confirmed by an assessment team, on-site data entered into a pre-selected template, and on-site data electronically transmitted to a data center. (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

15. **With respect to claims 14 and 87:** Daggett teaches the template provides for input including at least one of questions relevant to the protocol, a commercial standard, environmental compliance, non-conformance, and business needs. (Figure 5 – application includes the request to list "Protocol Used to calculate carbon credit")

16. **With respect to claim 15:** Daggett teaches the data entering into a template further includes recording at least one of time and geographical

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reference information. (Figure 5 – application includes section for landowner identifying information as well as latitude and longitude information)

17. **With respect to claim 16:** (Canceled)

18. **With respect to claim 17:** (Previously amended) Daggett teaches the template form a part of at least one of an electronic data instrument, and wherein the electronic data instrument provides for data entry and transmission thereof. (Fig. 5; paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

19. **With respect to claims 18 and 19:** (Canceled)

20. **With respect to claims 20 and 64:** (Previously amended) Daggett teaches the collected production practice data is commercial performance practice data comprising at least one of production throughput and production capacity. (paragraphs 8, 9 and 27 – insurance application requires information on how many acres farmer would like insured)

21. **With respect to claims 21-22:** (Canceled)

22. **With respect to claim 23:** (Previously amended) Daggett teaches prior to converting the production practice data to environmental data, said production practice data is confirmed by measuring at least one of the integrity and completeness of the production practice data, and testing data eligibility for processing the production data. (paragraphs 32, 34 and 35 – farmer or insurance agent working with farmer can use interactive computer to input was crops are

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intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone; the information is provided to insurance carriers to accurately categorize the risk levels)

23. **With respect to claim 24:** Daggett teaches the limitations in the rejections above. Daggett does not teach data eligibility testing includes at least one of testing for non-conforming practices, reviewing contract terms for the producer, reviewing pending environmental actions for the producer, comparing production practices documented through the collection of data to the baseline practice, and 3rd party auditing of the production practice data.

However, Sandor teaches data eligibility testing includes at least one of testing for non-conforming practices, reviewing contract terms for the producer, reviewing pending environmental actions for the producer, comparing production practices documented through the collection of data to the baseline practice, and 3rd party auditing of the production practice data. (page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ... reference emission level is preferably established to be able to obtain emissions data, reflect variations in economic cycles"; adjustments can be made to baseline)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with production practices via the collection of data to the baseline practice because of the need

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to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

24. **With respect to claims 25 and 67:** (Previously amended) Daggett teaches the limitations in the rejections above. Daggett does not teach however, Sandor teaches further comprising comparing the production practice data to standards of performance and identifying production practice compliance to said standards through labeling. (col. 5, tables 2 and 3 – various alphanumeric and numeric codes specified)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with production practice data reporting because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

25. **With respect to claim 26 and 68:** Daggett teaches the labeling includes at least one of identifying a government approval, conferring a regulatory shield, identifying the source of conditions conferring a compliance and identifying a source of environmental removal. (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

26. **With respect to claim 27:** (Previously amended) Daggett teaches the limitations in the rejections above. Daggett does not teach however, Sandor teaches the production practice data converting includes the production practice protocol having conversion factors selected from the group including reducing GHG emissions, providing clean water credits, providing clean air credits, providing soil erosion credits, and certifying animal welfare. (page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit.”)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with production practice data converting because of the need to have “a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases”. (Sandor: paragraph 11).

27. **With respect to claims 28-31:** (Canceled)

28. **With respect to claims 32, 56, 71 and 94:** (Previously amended) Daggett teaches the limitations in the rejections above. Daggett does not teach however, Sandor teaches wherein, prior to converting at least a portion of the environmental data to a plurality of emission reduction units, a first portion of the environmental data is allocated to a reserve pool, and a portion of the reserve pool is committed to at least one of mitigating delivery risk, and mitigating permanence risk. (page 4 paragraphs 52-54 – registry stores emission reduction



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practices and results; page 4, paragraph 56; page 9, paragraph 111 - at year-end emission source must transfer allowances or offsets equal to total emissions; page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit.”).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with allocating a portion of the environmental data to a reserve pool because of the need to have “a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases”. (Sandor: paragraph 11)

Furthermore, the data identifying first portion is non-functional descriptive data.

Descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material.” Exemplary “functional descriptive material” consists of data structures and computer programs, which impart functionality when employed as a computer component. “Nonfunctional descriptive material” includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed nonfunctional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must

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consider all claim limitations when determining patentability of an invention over the prior art. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed. Cir. 1983). The PTO may not disregard claim limitations comprised of printed matter. *See Gulack*, 703 F.2d at 1384-85, 217 USPQ at 403; *see also Diamond v. Diehr*, 450 U.S. 175, 191, 209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the subset. *See In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the subset, but the prior art describes a different descriptive material than the claim, then the descriptive material is nonfunctional and will not be given any patentable weight. That is, such a scenario presents no new and unobvious functional relationship between the descriptive material and the subset.

The Examiner asserts that the data identifying first portion adds little, if anything, to the claimed acts or steps and thus do no serve as limitations on the claims to distinguish over the prior art. MPEP 2106IV b 1(b) indicates that "nonfunctional descriptive material" is material "that cannot exhibit any functional interrelationship with the way the steps are performed". Any differences related merely to the meaning and information conveyed through data, which does not explicitly alter or impact the steps is non-functional descriptive data. The

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subjective interpretation of the data does not patentably distinguish the claimed invention.

29. **With respect to claims 33, 57, 72 and 95:** Daggett teaches the portion of the reserve pool includes at least one of an escrow pool and a leveraged instrument pool for backing a commercial insurance policy. (Figure 5; paragraphs 32 and 34 – insurance application includes section for landowner identifying information as well as latitude and longitude information; farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

30. **With respect to claim 34:** (Canceled)

31. **With respect to claim 35:** (Previously amended) Daggett teaches aggregating the production practice data from a plurality of producers, wherein the plurality of producers includes at least one common production practice. (paragraphs 22-41 – disclosure involves farmers and their crops)

32. **With respect to claim 36:** (Canceled)

33. **With respect to claims 37, 73 and 97:** (Currently amended) Daggett teaches the environmental data is registered by at least one of verifying a commercial suitability of the effective environmental data, recording the registering, designating ownership of the effective environmental data, (Figure 5; paragraphs 32 and 34 – application includes section for landowner identifying information as well as latitude and longitude information; farmer or insurance agent working with farmer can use interactive computer to input was crops are

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intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone). Daggett does not teach assigning a unique identifier thereto, and monitoring a transaction thereof.

34. **With respect to claims 38, 74 and 98:** Daggett teaches the unique identifier assigning includes at least one of a protocol related identifier, vintage, geographically referenced coordinates, specific emission reduction accounting, encryption. (Figure 5 – application includes section for landowner identifying information as well as latitude and longitude information).

35. **With respect to claim 39:** (Canceled)

36. **With respect to claims 40 and 76:** Daggett teaches the transaction monitoring includes at least one of monitoring a sale, transfer, exchange, and retirement of the environmental emission data. (paragraph 60 – “[t]herefore, as carbon credits are sold from a management zone, an indication is made in the GIS information that [the] management zone has had its carbon credits sold”).

37. **With respect to claim 41:** (Canceled)

38. **With respect to claim 42:** (Previously presented) Daggett teaches the limitations in the rejections above. Daggett does not teach however, Sandor teaches the converting at least a portion of the environmental data comprises choosing a registry jurisdiction. (page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type

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of energy activity and the selected activity unit"; factor can be based on location feature that is related to the geographic location of energy activities).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with the converting in Sandor because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

39. **With respect to claim 43:** (Canceled)

40. **With respect to claim 44:** (Canceled)

41. **With respect to claim 45:** Daggett teaches selling the emission reduction unit. (paragraphs 49 and 60 – "[c]ompanies and consumers will buy carbon credits because the need or want to reduce their emissions"; "[t]herefore, as carbon credits are sold fro a management zone, an indication is made in the GIS information that [the] management zone has had its carbon credits sold").

42. **With respect to claims 46, 59, 79 and 100: (Previously amended)**

Daggett teaches the limitations in the rejections above. Daggett does not teach however, Sandor teaches wherein selling the emission reduction unit comprises pooling the unit with a plurality of emission reduction units, said pool being adapted to be accessed during a point of sale event for reducing at least a portion of environmental emissions resulting from the point of sale event. (page 4 paragraphs 52-54 – registry stores emission reduction practices and results;

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page 4, paragraph 56; page 9, paragraph 111 - at year-end emission source must transfer allowances or offsets equal to total emissions )

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with establishing a pool for emission reduction unit and accessing the pool because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

**43. With respect to claims 47, 60, 80 and 101:** Daggett teaches the limitations in the rejections above. Daggett does not teach the point of sale event is selected from a group including at least one of an airline ticket, fuel at pump, coal for heating or electricity generation, and purchase of automobile. However, Sandor teaches the point of sale event is selected from a group including at least one of an airline ticket, fuel at pump, coal for heating or electricity generation, and purchase of automobile. (page 4, paragraphs 59 - 60 – emission allowances sold at auction).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with a point of sale event because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

Furthermore, the data identifying types of point of sale events is non-functional descriptive data.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Exemplary "functional descriptive material" consists of data structures and computer programs, which impart functionality when employed as a computer component. "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed nonfunctional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed. Cir. 1983). The PTO may not disregard claim limitations comprised of printed matter. *See Gulack*, 703 F.2d at 1384-85, 217 USPQ at 403; *see also Diamond v. Diehr*, 450 U.S. 175, 191, 209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the subset, but the prior art describes a different descriptive material than the claim, then the descriptive material is nonfunctional

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and will not be given any patentable weight. That is, such a scenario presents no new and unobvious functional relationship between the descriptive material and the subset.

The Examiner asserts that the data identifying types of point of sale events adds little, if anything, to the claimed acts or steps and thus do not serve as limitations on the claims to distinguish over the prior art. MPEP 2106IV b 1(b) indicates that "nonfunctional descriptive material" is material "that cannot exhibit any functional interrelationship with the way the steps are performed". Any differences related merely to the meaning and information conveyed through data, which does not explicitly alter or impact the steps is non-functional descriptive data. The subjective interpretation of the data does not patentably distinguish the claimed invention.

44. **With respect to claims 48, 61:** (Previously amended) Daggett teaches the limitations in the rejections above. Daggett does not teach however, Sandor teaches transferring title of at least one of the emission reduction units for offsetting at least a portion of the environmental emission. (paragraph 56 - at year-end emission source must transfer allowances or offsets equal to total emissions).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with the transferring of title in Sandor because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-



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based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

45. **With respect to claims 49:** (Canceled)

46. **With respect to claim 50:** Daggett teaches the limitations in the rejections above. Daggett does not teach allocating a plurality of emission reduction units from a plurality of producers of a controlling entity for offsetting environmental emissions of the controlling entity. However, Sandor teaches teach allocating a plurality of emission reduction units from a plurality of producers of a controlling entity for offsetting environmental emissions of the controlling entity. (paragraph 56 - at year-end emission source must transfer allowances or offsets equal to total emissions).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with the plurality of emission reduction units of Sandor because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

47. **With respect to claim 51:** (Canceled)

48. **With respect to claim 52:** (Currently amended) Daggett teaches:

- collecting production practice data associated with a production practice of a producer of at least one of environmental emission and environmental emission removal, said collecting being responsive to a selected protocol, said selected protocol being adapted to determine at least one of

environmental emissions mitigation and environmental emissions removal associated with the production practice of the producer compared to a baseline practice, wherein the production practice data is related to production operations in at least one of the following production sectors: agriculture, forestry, petroleum production, gas production, enhanced oil recovery, fuel production, ethanol production, semiconductor manufacturing, metal production, coal production, deep geologic sequestration, durable goods manufacturing, waste management, and waste landfills and ; (Fig. 5; paragraphs 22-35 and 64 – insurance policy , for example crop insurance with farmer that permits insurer to estimate risks and allows farmers to achieve reporting requirements; insurance provider insures farmer if certain requirements are met; information obtained includes farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone; carbon credits verified)

- title to the environmental data is transferred to an entity other than the producer. (paragraphs 49 and 60 – data verifying carbon credit is verified; credits are sold to individuals or companies)

Daggett does not teach, however, Sandor teaches:

- the production practice data is converted to environmental data using pre-selected conversion factors; (page 2, paragraph 21; page 3, paragraphs

28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit.”)

While Daggett in view of Sandor teach GHG emissions data (Fig. 15) and a registry (Fig. 1) for such data, Daggett/Sandor does not teach how this data from the various GHG emission is identified in the registry. However Schomer teaches that alpha-numeric codes can be used to identify GHG emissions:

- the environmental data is assigned a unique identifier;

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Sandor, Daggett and Schomer. Daggett teaches production practice and production practice data collection. While Sandor teaches selecting, converting, modifying, crediting and registering the data because of the need for an emissions allowance trading system. (Sandor: paragraph 9) Schomer teaches the tracking of chemicals.

49. **With respect to claims 53-55 and 58:** (Canceled)

50. **With respect to claim 62: (currently amended)** Daggett teaches: said production practice data relates to a production practice and is collected, responsive to a selected protocol, said selected protocol being adapted to determine at least one of environmental emission mitigation and environmental emissions removal associated with the production practice of the producer compared to a baseline practice, and the production practice data is related to production operations in at least one of the following production sectors: agriculture, forestry, petroleum production, gas production, enhanced oil

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recovery, fuel production, coal production, deep geologic sequestration, durable goods manufacturing, waste management, and waste landfills (Fig. 5; paragraphs 22-35 and 64 – insurance policy , for example crop insurance with farmer that permits insurer to estimate risks and allows farmers to achieve reporting requirements; insurance provider insures farmer if certain requirements are met; information obtained includes farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone; carbon credits verified)

Daggett does not teach, however Sandor teaches:

- converting production practice data to environmental data using pre-selected conversion factors; wherein (page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit.”)
- registering at least a portion of the environmental data for commercial use thereof. (page 4, paragraphs 53 and 54 – registry serves as official record of emission allowance)

While Daggett in view of Sandor teach GHG emissions data (Fig. 15) and a registry (Fig. 1) for such data, Daggett/Sandor does not teach how this data

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from the various GHG emission is identified in the registry. However Schomer teaches that alpha-numeric codes can be used to identify GHG emissions:

- assigning a unique identifier to the environmental data

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Sandor, Daggett and Schomer. Daggett teaches production practice and production practice data collection. While Sandor teaches selecting, converting, modifying, crediting and registering the data because of the need for an emissions allowance trading system. (Sandor: paragraph 9) Schomer teaches the tracking of chemicals.

51. **With respect to claims 63, 65-66, 69-70, 75 and 77:** (Canceled)

52. **With respect to claim 78:** Daggett teaches selling at least a portion of the plurality of emission reduction units. (paragraphs 49 and 60 – “[c]ompanies and consumers will buy carbon credits because the need or want to reduce their emissions”; “[t]herefore, as carbon credits are sold from a management zone, an indication is made in the GIS information that [the] management zone has had its carbon credits sold”).

53. **With respect to claims 81-83:** (Canceled)

54. **With respect to claim 84: (currently amended)** Daggett teaches:

- collecting production practice data associated with production practices of a plurality of producers, said production practices yielding at least one of environmental emissions mitigation and environmental emissions removal, said collecting being responsive to a selected protocol; (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use

interactive computer to input was crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

- a. said selected protocol being adapted to determine at least one of environmental emission mitigation and environmental emissions removal associated with the production practice of the producer compared to a baseline practice, and
- b. the production practice data is related to production operations in at least one of the following production sectors: agriculture, forestry, petroleum production, gas production, enhanced oil recovery, fuel production, coal production, deep geologic sequestration, durable goods manufacturing, waste management, and waste landfills; and (Fig. 5; paragraphs 22-35 and 64 – insurance policy, for example crop insurance with farmer that permits insurer to estimate risks and allows farmers to achieve reporting requirements; insurance provider insures farmer if certain requirements are met; information obtained includes farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone; carbon credits verified)

Daggett does not teach, however Sandor teaches:

- converting the production practice data to environmental data using pre-selected conversion factors using a processing device; (page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit.”)and
- registering the environmental data for commercial use thereof. (page 4, paragraphs 53 and 54 – registry serves as official record of emission allowance)

While Daggett in view of Sandor teach GHG emissions data (Fig. 15) and a registry (Fig. 1) for such data, Daggett/Sandor does not teach how this data from the various GHG emission is identified in the registry. However Schomer teaches that alpha-numeric codes can be used to identify GHG emissions:

- assigning a unique identifier to the environmental data

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Sandor, Daggett and Schomer. Daggett teaches production practice and production practice data collection. While Sandor teaches selecting, converting, modifying, crediting and registering the data because of the need for an emissions allowance trading system. (Sandor: paragraph 9) Schomer teaches the tracking of chemicals.

55. **With respect to claims 85, 88-93, 96 and 99:** (Canceled)

56. **With respect to claim 102:** Daggett teaches transferring title of the environmental data for offsetting at least a portion of the environmental

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emissions. (paragraphs 49 and 60 – “[c]ompanies and consumers will buy carbon credits because the need or want to reduce their emissions but find it more cost effective to buy offsets”; “[t]herefore, as carbon credits are sold fro a management zone, an indication is made in the GIS information that [the] management zone has had its carbon credits sold”).



### **CONCLUSION**

57. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heidi Riviere whose telephone number is 571-270-1831. The examiner can normally be reached on Monday-Friday 9:00am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. R./

Examiner, Art Unit 3689

/Janice A. Mooneyham/

Supervisory Patent Examiner, Art Unit 3689